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May 10, 2003

(Date)

Albert W. Watkins

Name of applicant, assignee, of registered representative

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May 10, 2003

Signature

Date of Signature

APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re:

Serial #: 09/570,507 **09/974,714**
For: Dimensional Dining Restaurant Management System
Filed: October 9, 2001
Inventor: Halverson, Helena B.
GAU: 3762
Examiner: Hoey
Docket #: Halverson-Cost

REQUEST FOR EXTENSION OF TIME

The applicant herewith petitions the Commissioner of Patents and Trademarks to extend the time for filing the appeal brief for 1 month from February 10, 2003 to May 12, 2003. Please charge my deposit account number 17-0155 in the amount of \$55. to cover the cost of the extension. The applicant is a small entity. Any deficiency or overpayment should be charged or credited to the above numbered account.

APPEAL TO THE BOARD OF APPEALS

On behalf of the above named appellant, appellant's representative respectfully appeals to the Board of Appeals for relief from the Examiner's final rejection of claim 24 dated October 9, 2002. Please charge all fees required for this correspondence to deposit account 17-0155.

1. REAL PARTY IN INTEREST

The present patent application is owned by the above named inventor.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

3. STATUS OF CLAIMS

Claims 21-24 are pending. Claims 21-23 stand allowed. Claim 24 stands finally rejected.

4. STATUS OF AMENDMENTS

No amendments are pending.

5. SUMMARY OF THE INVENTION

Claim 24 (The only claim on appeal)

Claim 24 recites the combination of a dining patron preference profile (fig's 10 - 12; page 23, line 5 - page 24, line 3), a dining event model (330, fig. 3) associated with said dining patron preference profile selected from a plurality of said event models (stored in database 130, pg 21, lines 2-3), and a customizable food service uniform (fig's 8, 9, 13 - 15) worn by at least one food

service employee (page 24, lines 5-6) which is configured to provide varying appearance responsive to said dining event model while still retaining a base outfit (page 24, line 6 - page 26, line 8) ,

said dining event model responsive to each of said dining patron preference profile, a selected background, and a theme for said dining event (page 13, line 19 - page 14, line 17);

said customizable food service uniform comprising:

a top (1300, fig's 13a,b; page 24, line) having a neck portion (1305, 1310, fig. 13) in an upper central part of said top, two arm passages (1315, fig 13) oppositely located from each other on first and second edges of said top, front fasteners (1320) arranged along a vertical midline beneath said neck portion on a front of said top; a pocket (1325) adjacent said fasteners, and a back fastener (1330) on a back of said top opposite said front; and

attachments for fastening to said front fasteners and said back fastener (1401-1432, fig. 14) responsive to said patron preference profile for simulating said varying appearance (elements 705 - 720 of fig 7; page 17, line 10 - page 20, line 20, esp page 20, lines 4 - 8);

wherein said combination of dining event model associated with said dining patron preference profile and said customizable food service uniform worn by at least one food service employee interact to deliver a unique dining event (page 20, line 21 - page 21, line 6).

6. ISSUES

A. Whether under 35 U.S.C. § 103(a), Keen and Zevchak render obvious the combination of dining patron preference profile, dining event model and customizable food service uniform recited in lines 1 - 4 of claim 24, where the dining event model is responsive to

dining patron preference profile and a selected background and theme as recited in lines 5 - 6, and where the attachments of the customizable food service uniform are responsive to the patron preference profile as recited in lines 12-13, and wherein the dining event model and customizable food service uniform interact to deliver a unique dining event, as recited in lines 15-16 of claim 24, in combination with the remaining features recited by the claim.

7. GROUPING OF CLAIMS

There is only one claim on appeal.

8. ARGUMENTS

I. REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

There are no outstanding rejections with basis in this section of the statutes.

II. REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

There are no outstanding rejections with basis in this section of the statutes.

III. REJECTIONS UNDER 35 U.S.C. § 102

There are no outstanding rejections with basis in this section of the statutes.

IV. REJECTIONS UNDER 35 U.S.C. § 103

Claim 24 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Keen in view of Zevchak. This single issue before the Board is whether under 35 U.S.C. § 103(a), Keen in view of Zevchak render obvious the combination of dining patron preference profile, dining event model and customizable food service uniform recited in lines 1 - 4 of claim 24, where the dining event model is responsive to dining patron preference profile, a selected background and theme as recited in lines 5 - 6, and where the attachments of the customizable food service uniform are responsive to the patron preference profile as recited in lines 12-13, and wherein the dining event model and customizable food service uniform interact to deliver a unique dining event, as recited in lines 15-16 of claim 24, in combination with the remaining features recited by the claim.

Claim 24 specifically recites a combination that includes a dining patron preference profile, dining event model and uniform. These element are not merely a compilation of unrelated elements, but are recited in claim 24 as related and interacting features. The attachments to the uniform are made responsive to the patron preference profile, and the dining event model and uniform interact to deliver a unique dining event.

Contrast this with the prior art relied upon in the present final rejection. While both Keen and Zevchak illustrate reconfigurable costumes, neither disclose, illustrate, teach or suggest the patron preference profile and dining event model recited in the combination claimed in claim 24. The cited prior art is completely silent on these elements explicitly recited by the appellant's claims.

When applying the *Graham v. John Deere* test, a review of the differences between the present invention and the prior art reveals that the prior art does not disclose, illustrate, teach or suggest the components necessary for the invention as recited. Consequently, for a finding of obviousness, there must be some teaching or motivation in the prior art for the combination recited by the appellant. The mere statement by the Examiner that "It would have been further obvious to have used the garment as any decorative costume including altering the look upon preferences of a diner, since the decorative costume could be created in any look as desired for end use" does not satisfy the requirement that the teaching be in the prior art. Rather, this is simply a proposal by the Examiner, based upon the benefit of the appellant's own disclosure. It still does not provide the missing patron profile or dining model, each which are recited in claim 24 and each which are recited as interacting with the costume in the claimed combination to yield the recited unique dining event.

In further consideration of the Examiner's statement, the ability for the costume to be modified does not render obvious the further combination recited by the appellant. Stated another way, were the Examiner's logic to apply in all patent cases, then wherever there were a combination claimed that included within that combination at least one pre-existing component, the invention would not be patentable. This would presumably be the case, continuing with the Examiner's logic, since to meet the requirements of 35 USC 101 the component must be able to be used in the combination. This is not the yardstick by which inventions are measured. From *Hodosh v. Block Drug co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed Cir. 1986), the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination. Without the features, there clearly is no combination to be made by any rearrangement of the references used in the present rejection.

The appellant has clearly recited the combination of elements that are not present or taught in the prior art. Consequently, relief from the Examiner's final rejection of claim 24 is respectfully requested.

V. REJECTIONS FOR OTHER REASONS

There are no outstanding rejections based upon reasons other than those listed above.

CONCLUSION

For the reasons outlined herein above, the Board of Appeals is requested to consider and reverse the rejections by the examiner. An appendix of all pending claims is attached.

Respectfully,

A handwritten signature in black ink, appearing to read 'Albert W. Watkins', with a long horizontal flourish extending to the right.

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APPENDIX OF CLAIMS

The claims, as they are at the time of appeal.

21. A method of using a food service uniform in combination with a dining event to enrich said dining event and provide additional stimulation to at least one diner, comprising the steps of:

collecting data representing preferences of said at least one diner;

comparing said data with a model;

selecting a theme for said dining event responsive to said comparing;

selecting at least one appearance for a food server during said dining event responsive to said theme; and

assembling said food service uniform to present said selected at least one appearance from a base costume and a plurality of removable attachments.

22. The method of claim 21 wherein said step of data collecting further comprises collecting both food and atmosphere preferences.

23. The method of claim 21 wherein said step of assembling further comprises the steps of:

adhering a collar attachment to a neck portion of said food service uniform; and

affixing a button cover to a front surface of said food service uniform.

24. The combination of a dining patron preference profile, a dining event model associated with said dining patron preference profile selected from a plurality of said event models, and a customizable food service uniform worn by at least one food service employee which is

configured to provide varying appearance responsive to said dining event model while still
5 retaining a base outfit,

said dining event model responsive to each of said dining patron preference profile, a
selected background, and a theme for said dining event;

said customizable food service uniform comprising:

a top having a neck portion in an upper central part of said top, two arm passages

10 oppositely located from each other on first and second edges of said top, front fasteners arranged
along a vertical midline beneath said neck portion on a front of said top; a pocket adjacent said
fasteners, and a back fastener on a back of said top opposite said front; and

attachments for fastening to said front fasteners and said back fastener responsive to said
patron preference profile for simulating said varying appearance;

15 wherein said combination of dining event model associated with said dining patron
preference profile and said customizable food service uniform worn by at least one food service
employee interact to deliver a unique dining event.